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EXAMINER

KATCHEVES, BASIL S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,339

Applicant(s)

THOMPSON, STEVEN C.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 28-32, 37-45 and 58-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 28-32, 35, 37, 58-60, 62-66, 68 and 69 is/are rejected.
- 7) ☒ Claim(s) 3, 61 and 67 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/17/05 5/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 6-27, 33-36, 46-57 and 70-96 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected groups I – III and V, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/15/05. The applicant argues that drawing 24 is the same species as drawings 25 and 26. The applicant's elected claims must then correspond to figs. 24-26 and are examined below.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 28-32 and 37-45 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,786,017. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claims 28-32 and 37-39 are substantial duplicates of claims 1, 2, 3, 1, 4, 9, 10, and 11.

Claims 40-45 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,786,017 in view of U.S. Patent No. 3,213,580 to Mark.

Regarding claims 37-45, '017 claims the basic claim structure but does not claim a threaded bolt as being the foot. Mark discloses a threaded bolt in a similar apparatus, the bolt used for raising or lowering the upright. And bolts passing through an elongated aperture to clamp the upright to the upstanding members (21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '017 by adding the threaded bolt of Mark in order to adjust the height of the apparatus in order to better level it with respect to the floor.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 58-60, 62-66, 68 and 69, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,931,429 to Hellwig et al.

Regarding claims 1, 58, 64, Hellwig discloses an upright (4) having a wall and a bottom end, an at least one aperture (where 24 is inserted) in the wall, a bracket (28) removably inserted into the aperture with a first portion (24) in the aperture and a second portion (22) extending away from the first portion and having a foot (50) coupled to it.

Regarding claim 2, 59, 65, Hellwig discloses a wall at the bottom of the upright (see leg supporting under upright 4).

Regarding claim 4, 60, 62, 66, 68, Hellwig discloses the first portion (24) as extending longitudinally through the bottom end portion of the upright.

Regarding claim 5, 63, 69, Hellwig discloses the first portion (24) as being received within an aperture of the upright interior wall (fig. 2: see 24 inside 4).

Claims 28-32 and 37-39, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,213,580 to Mark.

Regarding claim 28, Mark discloses an upright (11) with a plurality of sidewalls and a bottom end (9), a base plate (24) secured to the floor via a fastener (36), an upstanding member (20) extending from the baseplate clamped to the upright via a second fastener (34) through apertures in the upright.

Regarding claim 29, Mark discloses at least one edge of the upstanding member (fig. 2: see vertical edge of 20) clamped to the side of the sidewall of the upright.

Regarding claim 30, Mark discloses the a straight edge of the upstanding member as in contact with the upright.

Regarding claim 31, Mark discloses a second upstanding member extending from the base (see base 24 and opposite side base), and clamped to the upright, adjacent to the bottom end.

Regarding claim 32, Mark discloses the two upstanding members as clamped to the upright on opposite sides (fig. 2).

Regarding claim 37, Mark discloses the upright as connected to the upstanding member on one of two sides.

Regarding claim 38 Mark discloses an aperture through the baseplate to receive a fastener.

Regarding claim 39, Mark discloses the upright and the upstanding member as having mating cross sections for mating the members together.

Claim Objections

Claim 3, 61, 67 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowable Subject Matter

Claims 40-45 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to supports in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK


Basil Katcheves

2/23/06

Examiner AU 3635